

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MAURICE COOPER,

Plaintiff,

v.

ALISHA WASHINGTON, ET AL,

Defendants.

Case No. 2:21-cv-01847-ART-DJA

ORDER GRANTING MOTION TO
DISMISS AND DENYING MOTION
FOR SUMMARY JUDGMENT

This is an action regarding the allegedly negligent assignment of Plaintiff Maurice Cooper ("Cooper") to reside at a particular address as a condition of his supervised release. Cooper sues Chad Boardman ("Boardman"), Chief of the United States Probation Office ("USPO") and Alisha Washington ("Washington"), Case Manager of Las Vegas Community Corrections Center ("LVCCC"). The United States, acting on behalf of Boardman, has filed a motion to dismiss (ECF No. 19) and a motion to stay (ECF No. 31.) LVMCC has likewise filed a motion to dismiss. (ECF No. 23.) Cooper has filed a motion for summary judgment. (ECF No. 11.) For the reasons stated below, this Court grants the Defendants' motions to dismiss and denies Plaintiff's motion for summary judgment and the United States' motion to stay as moot.

I. BACKGROUND

Plaintiff Cooper sues Defendants for breach of contract and negligence allegedly resulting from his housing placement following a term of incarceration. (ECF No. 1-2 at 2.)

Specifically, Cooper alleges that—after serving a term of incarceration for bank robbery—he was released on a federal furlough and entered LVCCC, where he stayed until June 13, 2017. (ECF No. 1-2 at 9.) Washington was his case manager at LVCCC. (*Id.*) Cooper alleges that LVCCC, through Washington,

1 instructed him to live at 1048 Hassell Avenue Las Vegas, Nevada 89106. (“1048
2 Hassell”) (*Id.*) Cooper further alleges that the conditions at 1048 Hassell were
3 unsanitary, that his mail was tampered with, and that the other occupants living
4 at 1048 Hassell were possibly drug users or convicted felons. (ECF No. 1-2 at 7-
5 8.) The felonious status of other residents of 1048 Hassell was of particular
6 concern to Cooper, he alleges, because the conditions of his supervised release
7 prohibited contact with persons convicted of a felony. (ECF No. 1-2 at 8.) Cooper
8 prays for compensatory damages of \$15,000, general damages of \$15,000,
9 statutory interest, and discretionary equitable relief. (ECF No. 1-2 at 9-10.)

10 Cooper initially filed his complaint in Nevada state court on September 9,
11 2021 and attempted to serve LVCCC and the Probation Office by mailing his
12 complaint via FedEx and the United States Postal Service. (ECF No. 1-2 at 2, 15.)
13 Twenty-six days later, on October 5, 2021, Cooper filed for default in state court,
14 but the clerk of court did not sign his entry of default. (ECF No. 8 at 3.) Default
15 was never entered in the state court proceeding. The next day, October 6, 2021,
16 the United States removed the case to federal court in accordance with 28 U.S.C.
17 §1442(a)(1). On October 12, 2021, LVCCC and Washington joined in the United
18 States’ removal. (ECF No. 6.)

19 On October 21, 2021, Cooper moved for summary judgment (ECF No. 11.)
20 In his motion, Cooper restates the identities of the parties, alleges that he served
21 the defendants via FedEx, and re-alleges the causes of action in his Complaint.
22 (ECF No. 11 at 2-4.) Citing his own default filing—unsigned by the clerk of court—
23 Cooper also alleges that defendants defaulted in the state court action. (ECF No.
24 11 at 2.)

25 On November 12, 2021, the United States, on behalf of Boardman,
26 responded to Cooper’s motion for summary judgment and moved to dismiss
27 Cooper’s Complaint. (ECF No. 19.) The United States argued that there were few
28 undisputed facts in this action, that Cooper’s efforts at service failed to comply

1 with Fed. R. Civ. P. 4(i)(2) & (3), and that this Court lacked subject matter
 2 jurisdiction over: 1) Cooper's breach of contract claim because the Court of
 3 Federal Claims possesses exclusive jurisdiction over breach of contract claims
 4 involving the United States in excess of \$10,000; and 2) Cooper's negligence claim
 5 because Cooper did not exhaust his remedies under the Federal Tort Claims Act.
 6 (ECF No. 19 at 3-7.)

7 On November 22, 2021, Defendants LVCCC and Washington also moved to
 8 dismiss Cooper's complaint. (ECF No. 23.) LVCCC and Washington argued that
 9 Cooper's negligence claim is barred by the statute of limitations, Cooper failed to
 10 state a claim for breach of contract because he did not establish that a contract
 11 between himself and LVCCC or Washington existed, and Cooper failed to properly
 12 serve LVCCC or Washington. (ECF No. 23 at 5-8.)

13 **II. ANALYSIS**

14 Even if Cooper is correct that he was negligently released to 1048 Hassell, this
 15 Court dismisses Cooper's claims against all defendants as he failed to serve them
 16 properly.

17 **A. Legal Standard**

18 "A federal court does not have jurisdiction over a defendant unless the
 19 defendant has been served properly under Fed. R. Civ. P. 4." *Direct Mail*
 20 *Specialists v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988).
 21 "[W]ithout substantial compliance with Rule 4 'neither actual notice nor simply
 22 naming the defendant in the complaint will provide personal jurisdiction.'" *Id.*
 23 (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986). Once service of
 24 process is properly challenged, the plaintiff bears the burden of establishing that
 25 service was valid under Rule 4. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir.
 26 2004). Service is to be provided pursuant to the law of the forum state. *See Fed.*

1 R. Civ. P. 4(e)(1).¹ District courts have broad discretion to either dismiss an action
 2 entirely for failure to effectuate service or to quash the defective service and
 3 permit re-service. *See SHJ v. Issaquah Sch. Dist. No. 411*, 470 F.3d 1288, 1293
 4 (9th Cir. 2006) (“the district court has discretion to dismiss an action or quash
 5 service”).

6 **B. Cooper Failed To Properly Serve All Defendants In This Action**

7 Cooper chose to serve all defendants in this action via FedEx and United
 8 States Mail. (ECF No. 1-2 at 15.) Because service in this manner does not
 9 substantially comply with Federal Rule of Civil Procedure 4 or Nevada Rule of
 10 Civil Procedure 4, this Court grants Defendants’ motions to dismiss.

11 **1. Cooper did not properly serve Defendant Boardman**

12 Nevada’s Rules of Civil Procedure provide that service upon the United States
 13 may be effectuated in accordance with Federal Rule of Civil Procedure 4. *See*
 14 NRCP 4.3(5). Cooper’s mailing of the complaint, summons, and order to proceed
 15 *in forma pauperis* to the Nevada Probation Office did not satisfy the specific
 16 requirements of Federal Rule of Civil Procedure 4(i). Whether Cooper attempts to
 17 sue Boardman in his official or individual capacity, Cooper must also serve the
 18 United States. *See* Fed. R. Civ. P. 4(i)(2) (“To serve . . . a United States officer . . .
 19 in an official capacity, a party must serve the United States”); 4(i)(3) (“To
 20 serve a United States officer . . . in an individual capacity . . a party must serve
 21 the United States”). To serve the United States, a party must 1) either deliver
 22 a copy of the summons and the complaint to the United States attorney for the
 23 district where the action is brought or their written delegee, or send a copy of the
 24 summons and complaint via registered or certified mail to the civil-process clerk
 25 at the United States attorney’s office; and 2) send a copy of the summons and
 26 complaint to the Attorney General of the United States at Washington, D.C. *See*

27 ¹ The Nevada Rules of Civil Procedure provide that “[s]ervice upon the United States and its
 28 agencies, corporations, officers, or employees may be made as provided by Rule 4 of the Federal
 Rules of Civil Procedure.” NRCP 4.3(5).

1 Fed. R. Civ. P. 4(i)(1)(A)(i), (ii) and 4(i)(1)(B).

2 Here, Cooper failed to serve the Summons and Complaint on the United States
3 Attorney for the District of Nevada or his designee, in accordance with Rule
4 4(i)(1)(A)(i), and also did not send the Summons and Complaint by certified mail
5 to the civil-process clerk at the United States attorney's office in accordance with
6 Rule 4(i)(1)(A)(ii). In addition, Cooper did not send a copy of the Summons and
7 Complaint by registered or certified mail to the Attorney General of the United
8 States at Washington D.C. in accordance with Rule 4(i)(1)(B). Therefore, Cooper
9 has not substantially complied with Rule 4(i), and this Court grants the United
10 States' Motion to Dismiss on behalf of Boardman for lack of personal jurisdiction.
11 (ECF No. 19.)

12 **2. Cooper did not properly serve LVCCC or Washington**

13 Cooper did not properly serve Washington. "As a general matter, state
14 procedural rules govern state lawsuits until they are removed to federal court."
15 *Prazak v. Loc. 1 Int'l Union of Bricklayers & Allied Crafts*, 233 F.3d 1149, 1152
16 (9th Cir. 2000) (citing *Herb v. Pitcairn*, 324 U.S. 117, 120 (1945).) Therefore, this
17 Court evaluates Cooper's method of service as to Washington under Nevada law
18 as it transpired prior to removal. As discussed above, Cooper mailed his
19 summons and complaint via FedEx and United States Postal Service. Service as
20 to Washington will only be proper if this method accords with Nevada's own rules
21 for service of process. It does not.

22 Unless a defendant waives service of a summons, Nevada Rule of Civil
23 Procedure 4.2(a) requires service to be made on an individual either personally,
24 by leaving a copy of the summons and complaint at the individual's residence
25 with a person of suitable age and discretion who lives there and is not an adverse
26 party, or by delivering a copy of the summons and complaint to an agent
27 authorized to receive service of process. See NRCP 4.2(a). Here, Cooper attempted
28 service of process via mail, and mail—standing alone—is not authorized by the

1 Nevada Rules of Civil Procedure for service upon an individual. Therefore, this
 2 Court grants Defendants’ Washington and LVCCC’s Motion to Dismiss for lack of
 3 personal jurisdiction as to Washington. (ECF No. 23.)

4 Cooper also did not properly serve LVCCC. Nevada Rule of Civil Procedure
 5 4.2(c)(1)(A) governs service on entities and associates in Nevada. Nevada entities
 6 or associations may be served by “delivering a copy of the summons and
 7 complaint” to a number of enumerated agents, members, or partners. NRCP
 8 4.2(c)(1)(A). Nevada Rule 4.2(c)(1)(A) does not authorize freestanding service of
 9 process by mail against Nevada entities or associations. *Id.*

10 Because Cooper only attempted service of process via mail, this Court grants
 11 Washington and LVCCC’s Motion to Dismiss for lack of personal jurisdiction as
 12 to LVCCC.

13 **3. Cooper’s additional arguments do not alter the outcome**

14 Cooper cites *Houston v. Lack* for the proposition that the documents he
 15 mailed—his complaint, summons, and order to proceed *in forma pauperis*—were
 16 deemed filed when he dropped them off at the FedEx Office. 487 U.S. 266 (1988)
 17 (ECF No. 1-2 at 15.) *Houston*, however, was limited to *pro se* prisoners, and
 18 explicitly differentiated *pro se* prisoners from other civil litigants. *Houston*, 487
 19 U.S. at 273 (“the lack of control of *pro se* prisoners over delays extends much
 20 further than that of the typical civil litigant . . . their lack of freedom bars them
 21 from delivering the notice to the court clerk personally.”) The Supreme Court
 22 explicitly noted in *Houston* that it did not disturb the lower courts’ rejection of
 23 “the general argument that a notice of appeal is ‘filed’ at the moment it is placed
 24 in the mail. . . .” *Id.* at 274 (“To the extent these cases state the general rule in
 25 civil appeals, we do not disturb them.”). Therefore, this Court finds that *Houston*
 26 is not applicable in the present action.

27 Additionally, here Cooper’s *pro se* status does not alter the analysis because
 28 “*pro se* status, alone, is not a justifiable excuse for the defect” in service of

process. *Graham v. United States*, 79 Fed. App'x. 992, 993 (9th Cir. 2003). Likewise, Cooper's constructive service on the defendants in this action—as evidenced by their responses to his pleadings in this lawsuit—is insufficient as “even actual notice will not provide personal jurisdiction” unless there is “‘substantial compliance’ with Fed. R. Civ. P. 4. . . .” *Graham*, 79 Fed. App'x. at 993-94 (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)). Because Cooper's method of service did not substantially comply with Rule 4, this Court grants Defendants' Motions to Dismiss for lack of personal jurisdiction.

III. CONCLUSION

The Court notes that all defendants provided additional defenses but does not reach them at this juncture.

If Cooper wishes to file a new complaint he must also properly serve all defendants in accordance with Nevada Rule of Civil Procedure 4 and Federal Rule of Procedure 4. Cooper may also address the additional arguments posed by defendants—particularly with regard to the existence of some contract between Cooper and LVCC, Washington, or Boardman. The Court additionally notes that a duty only found in a federal statute may not form the basis of a negligence claim under the Federal Tort Claims Act. *See Delta Sav. Bank v. United States*, 265 F.3d 1017, 1024 (9th Cir. 2001) (“The breach of a duty created by federal law is not, by itself, actionable under the FTCA.”) (quoting *U.S. Gold & Silver Invs. Inc. v. United States*, 885 F.2d 620, 621 (9th Cir. 1989)).

IT IS HEREBY ORDERED THAT Defendant Chad Boardman's Motion to Dismiss (ECF No. 19) is GRANTED. All of Cooper's claims against Boardman are dismissed without prejudice.

IT IS FURTHER ORDERED THAT LVCCC and Washington's Motion to Dismiss (ECF No. 23) is GRANTED. All of Cooper's claims against LVCCC and Washington are dismissed without prejudice.

1 IT IS FURTHER ORDERED THAT Cooper's Motion for Summary Judgment
2 (ECF No. 11) and Defendant United States' Motion to Stay (ECF No. 31) are
3 DENIED as moot.

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5 IT IS SO ORDERED.

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7 DATED THIS 13th day of October 2022.

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10 ANNE R. TRAUM
11 UNITED STATES DISTRICT JUDGE
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